IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

WP(C).No. 7794 of 2007(C)

PETITIONER:

BHARAT SANCHAR NIGAM LIMITED,
A GOVERNMENT OF INDIA ENTERPRISE,
REPRESENTED BY GENERAL MANAGER, CMTS,
RTP BUILDINGS, LUKES LANE,
THIRUVANANTHAPURAM- 695 001.

BY ADV. SRI.K.RAMAKUMAR, SC, BSNL

RESPONDENTS:

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1. SECRETARY,
THODUPUZHA MUNICIPALITY.

2. STATE OF KERALA,
REPRESENTED BY SECRETARY TO LICAL SELF GOVT.
INSTITUTIONS (RURAL), SECRETARIAT ANNEXE,
THIRUVANANTHAPURAM.

R2 BY GOVT.PLEADER SMT.T.B.RAMANI
R1 BY ADV.SRI.P.K.SOYUZ, S.C.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No. 7794 of 2007

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Dated: 22nd March, 2007

JUDGMENT

Heard Mr.K.Ramakumar, Standing Counsel for the B.S.N.L., the writ petitioner and Mr.P.K.Soyuz, Standing Counsel for the 1st respondent-Municipality.

2. The petitioner-B.S.N.L seeks quashment of the notice dated 2.1.2007 and 24.1.2007 issued by the 1st respondent-Municipality directing the petitioner to produce a certificate from the Atomic Energy Commission to the effect that radiations from the mobile tower to be installed by the petitioner will not to be injurious to human lives. Under Ext.P3 the Municipality has directed the petitioner to submit an affidavit before the Municipality that if the judgment of this court in the Writ Petition challenging the order of the Ombudsman on the basis of which only the Municipality insisted that the petitioner shall produce a certificate from the Atomic Energy Commission goes against the stand of the petitioner, the petitioner will remove the tower within 30 days. I had occasion to decide Writ Petitions filed by other mobile telephone companies impugning the order of the Ombudsman and consequential orders passed by the local authorities on the basis of the Ombudsman's order. I had in fact relied on the Division Bench judgment of this court in **Reliance**

Infocom Ltd. v. Chemanchery Grama Panchayat (2006(4) KLT 695) wherein the Division Bench after noticing the affidavit which was filed by the Atomic Energy Regulatory Board before the Bombay High Court as well as a report submitted by the World Health Organisation in that court found that the emission/radiation from the mobile towers will be relatively less as against the radiation/emission from the radio towers. I had in fact occasion to consider copies of that affidavit and the report of the W.H.O. in other cases decided by me. Under these circumstances, following the view which I have taken in the earlier cases and the views expressed by the Division Bench in the decision referred to above, this Writ Petition is only to be allowed. Accordingly, the Writ Petition will stand allowed. Exts.P2 and P3 are quashed and the 1st respondent-Municipality is directed to consider the application for licence submitted by the petitioner without insisting on production of any No Objection Certificate or permission from the Atomic Energy Commission. In other words, if the petitioner is having all statutory consents and No Objection Certificates, the 1st respondent will not hesitate to issue the licence applied for.

srd **PIUS C.KURIAKOSE, JUDGE**